

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5690 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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FAUJDAR JAGNNATH TRIPATHY

Versus

INSPECTOR GENERAL OF PRISONS

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Appearance:

MR IS SUPEHIA for Petitioner

MR DA BAMBHANIA for Respondent No. 1

SERVED for Respondent No. 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/10/96

ORAL JUDGEMENT

The petitioner was appointed under respondent No.1 as Sipoy on 1st December, 1962. Further promotion from the post of Sipoy is made to the post of Nayak . It is the case of the petitioner that the petitioner had become due for such promotion in the year 1987 when in the month of April, 1987 and, thereafter, some of the

Sipoy junior to the petitioner were promoted as Nayak. The petitioner upon inquiry was informed that in view of the adverse entries made in his service record, the petitioner was considered unfit for promotion and the petitioner was, therefore, superseded. Learned advocate Mr. Supehia has appeared for the petitioner and has contended that in the long service tenure of the petitioner, the petitioner had not earned any adverse remarks. However, for the first time, for the year 1984-85, and 1985-86, adverse entries were made in the service records of the petitioner. Mr. Supehia has contended that in view of the clean service record of the petitioner and in view of the Government instructions contained in the Government Resolution dated 8th March, 1969, the Reviewing Officer ought to have sought explanation of the Reporting Officer for entering such adverse entries in the service record of the petitioner. He has further submitted that the petitioner was not issued any Memorandum or a warning before entering such adverse entries in his service record. He has submitted that the said adverse entries have been made with mala fide intention to deprive the petitioner of the promotion which was due to him. He has also submitted that the respondents have not maintained any ephemeral roll of the petitioner and in absence of such rolls, no adverse entries could have been made in his service record. He has also submitted that his case for promotion was considered while his representation against those adverse entries were pending before the Higher Authority and in view of the pendency of the said representation, the Departmental Promotion Committee ought to have ignored the adverse entries made in the service record of the petitioner. He has, therefore, submitted that the respondents be directed to reconsider the case of the petitioner for promotion ignoring adverse entries made in his service record for the year 1984-85 and 1985-86. In support of his contentions, Mr. Supehia has relied upon the judgment of this Court in the matter of Dr. B.R.Kulkarni [ 19 GLR pg. 1021 ].

2. The claim of the petitioner has been contested by the respondents by filing its Counter Affidavit. It is submitted that the promotions to the post of Nayak is made from amongst Sipoy of proved merits and efficiency. The case of the petitioner for such promotion was considered by the Selection Committee on 31st July, 1986 and thereafter on 13th September, 1988. On both the occasions, the Selection Committee did not find the petitioner fit for promotion and, therefore, the petitioner was superseded while some of the Sipoy junior to the petitioner were promoted in the month of April,

1987 and, thereafter. I have been told at the Bar that the petitioner has been promoted as Sipoy pending this petition in the month of February, 1996.

3. The representations made by the petitioner against the adverse entries communicated to him have been annexed to this petition. I have perused the representations. The only contention raised in those representation is the vague allegations of mala fide against the Reporting Officer. No contention has been raised in the said representation that the ephemeral roll of the petitioner were not maintained. I am, therefore, of the view that the contention is an after thought and the petitioner now cannot be permitted to raise such a contention which he had not raised in his representations against the adverse entries made in his service record. The only other contention is that of mala fide. The allegations of mala fide against the Reporting Officer are vague and the Reporting Officer is not impleaded as party-respondent to this petition. In that view of the matter, the allegations of mala fide made against the Reporting Officer cannot be entertained.

4. It is the function of the superior authority to examine the performance of the subordinate officer and to maintain the service record. The adverse entries made by the reporting officer after examining performance of his subordinate which is confirmed by the reviewing officer cannot be ignored unless there are valid reasons for doing so. In the present case, the petitioner has not made out any case for ignoring the adverse entries made in his service records which have been confirmed even after his representations. Similarly, I cannot accept the arguments of Mr. Supehia that before entering any adverse entry in the service record of the petitioner, the petitioner ought to have been issued warning or memorandum. It is only after entry of such adverse entries, the competent authority is required to communicate the same to the persons concerned and such Government servant, if aggrieved, can make representation to the higher authority. In the present case, all the above formalities have been complied with. Further representations made by the petitioner have also been rejected. In that view of the matter, contentions of the petitioner that the adverse entries made in his service record ought to have been ignored requires to be rejected.

In the matter of Dr. B.R.Kulkarni [supra], the Court was considering adverse entries which were not communicated or were communicated belatedly. The Court was also considering the duties of the reporting officer

as well as the reviewing officer and the necessity of maintenance of the ephemeral rolls. In the present case, neither the adverse entries have remained uncommunicated nor have they been communicated belatedly. The contention of the petitioner that the ephemeral rolls were not maintained also seems to be an after thought. In that view of the matter, the principles laid down in the above judgment are not attracted.

5. The case of the petitioner for promotion has been considered by the Departmental Promotion Committee in accordance with the Rules alongwith other Sipoyas. However, the Departmental Promotion Committee considering the service records of the petitioner has not found him fit for promotion. This Court, while exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India would,ordinarily, not sit in appeal over the decision of the departmental selection committee. Since the case of the petitioner has been considered and he has not been found suitable for promotion, the respondents cannot be directed to promote the petitioner or to give him deem date of such promotion as claimed by the petitioner.

6. In view of the above discussion, the petition is dismissed. Rule is discharged. Interim order made earlier is vacated. There shall be no order as to costs.

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